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templation of the parties. *Manchester & Oldham Bank v. Cook* (1883) 49 L. T. (N. S.) 674; *Heddin v. Scneblin* (1907) 126 Mo. App. 478, 104 S. W. 887; *cf.* 14 Columbia Law Rev. 154; but *cf.* *Bixby-Thierson Lumber Co. v. Evans* (1910) 167 Ala. 431, 52 So. 843, second appeal (1911) 174 Ala. 571, 57 So. 39. Since it appears that the plaintiff's resultant damages were within the contemplation of the parties at the time of making the agreement, and that the plaintiff was precluded from obtaining a loan elsewhere, the decision seems sound and in accord with the weight of authority.

**CONTRACTS—FORBEARANCE TO RESCIND AS CONSIDERATION FOR THIRD PARTY'S PROMISE.**—Defendant, whose daughter was engaged to marry an Italian Count, promised, in consideration of the marriage, to pay the daughter \$2,500 annually. The marriage took place, and plaintiff sues as assignee for unpaid installments. *Held*, that the daughter, being a beneficiary, by acting in reliance upon the promise, adopted it and thereby became a joint promisee; that the joint forbearance to rescind the engagement contract was sufficient consideration for defendant's promise. *De Cicco v. Schweizer* (1917) 221 N. Y. 431, 117 N. E. 807.

Since parties to an executory contract have a legal right to rescind by mutual consent, Anson, *Contracts* (8th Am. ed.) 104; see *McCreery v. Day* (1890) 119 N. Y. 1, 23 N. E. 198, it would seem that their joint forbearance to rescind involves the surrender of a legal right which constitutes consideration for a third party's promise. Some jurists have suggested that this is true even of forbearance by one party alone to offer or accept rescission. Anson, *op. cit.* 110; *cf.* Williston, "Successive Promises of the Same Performance" 8 *Harvard Law Rev.* 54 *et seq.* It is doubtful, in the principal case, if such forbearance was the consideration requested. The chief difficulty, however, is in finding that the daughter was a joint promisee. The court relied upon the theory, peculiar to New York, that a beneficiary acquires a right to sue by adopting the promise. *Gifford v. Corrigan* (1889) 117 N. Y. 257, 22 N. E. 756; *Clark v. Howard* (1896) 150 N. Y. 232, 44 N. E. 695. But a beneficiary is not a joint promisee, and allowing him to sue upon the contract does not make him such. The New York courts have hitherto invoked the adoption theory only to explain the beneficiary's right of action, see *Durnherr v. Rau* (1892) 135 N. Y. 219, 32 N. E. 49, and there seems to be no justification for extending its application. It should be noted, moreover, that this doctrine is confined to the group of cases following *Lawrence v. Fox* (1859) 20 N. Y. 268, in which the promisor assumes an obligation of the promisee to the beneficiary. See *Litchfield v. Flint* (1887) 104 N. Y. 543, 11 N. E. 58; *cf.* *Todd v. Weber* (1884) 95 N. Y. 181; *Little v. Banks* (1881) 85 N. Y. 258. Therefore, while the result reached in the principal case may be desirable, the court's reasoning is unsound, and the fiction of adoption was carried to an extreme which, if the decision is followed, will produce absurd consequences. The court apparently felt the weakness of its position, for it supported its decision also upon the ground that in marriage settlements consideration is of minor importance. See 7 *Columbia Law Rev.* 203.

**CRIMINAL LAW—FALSE PRETENSES—CONSTRUCTION OF STATUTE—WHAT CONSTITUTES "VALUABLE THING".**—Under a statute declaring that a person shall be guilty of cheating who fraudulently obtains from

another "any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever", nothing being said of obtaining a signature to an instrument, *held*, that fraudulently obtaining a promissory note from the maker thereof comes within the meaning of "valuable thing". *Knepper v. People* (Colo. 1917) 167 Pac. 779.

It is a general rule that penal statutes should be construed in favor of the prisoner; but this rule does not require that a fantastic construction should be given which would defeat the real intention of the legislature. A note complete on its face in the hands of the maker is technically speaking no note at all. Norton, *Bills & Notes* (4th ed.) § 35. It is not an obligation nor a valuable thing. But no sooner is it delivered than it becomes a chose in action and represents a liability against the maker. Furthermore its negotiation to a holder in due course deprives the maker even of the defense of non-delivery. Neg. Instr. Law § 16 (N. Y. § 35). In view of this it has been held that a note obtained by false pretenses from the maker comes within the terms "property", *People v. Skidmore* (1899) 123 Cal. 267, 55 Pac. 984; but *cf. People v. Cassou* (1915) 27 Cal. App. 23, 148 Pac. 810; *Regina v. Danger* (1857) 7 Cox C. C. 303, and "valuable thing". *State v. Thatcher* (1872) 35 N. J. L. 445; see *State v. Porter* (1881) 75 Mo. 171; *cf. Queen v. Gordon* (1889) 23 Q. B. D. 354. Since the substance of the offense consists in obtaining a valuable thing, a distinction ought to be made between negotiable and non-negotiable notes, as an action on the latter will of necessity be subject to an equitable defense. *Robinson v. State* (1890) 53 N. J. L. 41, 20 Atl. 753; *contra; State v. Porter, supra*, 177. Similarly, the note of an infant maker should not be considered as embraced within any of the foregoing terms. See *Commonwealth v. Lancaster* (Mass. 1835) Thach. Cr. Cas. 428. But the fact that the maker is insolvent or the fact that the note has not been negotiated by the prisoner, have properly been deemed insufficient to warrant an acquittal. See *Holton v. State* (1899) 109 Ga. 127, 34 S. E. 358. Since the purpose of the statute under consideration is to suppress cheating and discourage the making of false representations, whether or not the prosecutor in fact sustains any pecuniary loss, see *Commonwealth v. Ferguson* (1909) 135 Ky. 32, 121 S. W. 967, the interpretation put upon it seems to effectuate it, and a contrary construction would put an artificial restriction upon its operation.

**DAMAGES—LIQUIDATED DAMAGES—EFFECT OF DELAY CAUSED BY OWNER IN BUILDING CONTRACT.**—A contract provided for the wrecking of a building in 30 days. The architect was empowered to certify an extension of time, on application by the contractor, for delays caused by the owner and certain other causes. There was a delay of 7 days in vacating the building, and the contractor did not complete the wrecking until 37 days thereafter. The contract provided for liquidated damages at \$25 a day for each day's delay. *Held*, since the contract provided for an extension of time, the initial delay of the owner did not destroy the provision for liquidated damages; and as no extension had been applied for, plaintiff was entitled to recover for the delay of the contractor. *Trauts Realty Corp. v. Casualty Co. of America* (Sup. Ct. App. Term 1917) 166 N. Y. Supp. 807.

Where a contract provides that certain work shall be completed within a stipulated time, and contains a provision for liquidated damages for delay, the obligation is annulled if the owner himself con-